

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
the Richardson Bay Sanitary District)
for Review of Order No. 74-208)
(NPDES Permit No. CA0037419),)
California Regional Water Quality)
Control Board, San Francisco Bay)
Region)

Order No. WQ 76-4

BY THE BOARD:

On December 17, 1974, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), adopted Order No. 74-208 (NPDES Permit No. CA0037419), waste discharge requirements for Richardson Bay Sanitary District, Marin County (District). The District discharges secondary treated municipal wastewater into Richardson Bay, a part of San Francisco Bay.

The District, by letter dated January 17, 1975, filed a petition for review of Order No. 74-208. On October 27, 1975, the District filed additional arguments or comments in support of its petition for review.

CONTENTIONS AND FINDINGS

1. Contention

The expiration date of the order, which is only 20 months from the adoption date, is prejudicial and discriminatory as other waste discharge requirements expire after five years.

Discussion and Finding

Order No. 74-208 will expire on August 1, 1976, some 20 months after adoption by the Regional Board. The Federal Water Pollution Control Act and federal and state regulations provide that NPDES permits may be issued for some fixed term not to exceed five years. (FWPCA, Section 402(b)(1)(B); 40 C.F.R. 125.41; Section 2235.7, Subchapter 9, Chapter 3, Title 23, California Administrative Code). There is no statutory nor regulatory requirement which prescribes any minimum duration for an NPDES permit. The hearing record before the Regional Board discloses that the District is actively involved in a subregional study for Marin County dischargers which could substantially affect future discharges of the District. The project report involving consolidated facilities is due in early 1976. The Regional Board indicated that it felt that mid-1976 would be an appropriate time to review the requirements so as to take into account the results of the subregional study. The permit expiration date clearly was related to the subregional study process.

Consequently, we find that the duration of the permit issued by the Regional Board in this case plainly falls within the Regional Board's statutory authority, is not for an unreasonably short length of time and constitutes a proper exercise of discretion by the Regional Board on permit duration. The fact that the District may not, at this time, be in a position to comply with permit time schedules, as represented in the District's letter dated October 27, 1975, is a matter for Regional Board consideration.

regarding compliance with the permit and does not affect the reasonableness of the expiration date of the permit.

2. Contention

The permit effluent limitations for BOD, suspended solids, coliform bacteria and receiving water limitations for floating matter or foam and nondissociated ammonium hydroxide are unreasonable and cannot be met by the District.

Discussion and Findings

The NPDES permit requires compliance with effluent BOD, coliform and receiving water floating matter or foam in accordance with Regional Board Orders Nos. 71-33 (cease and desist order) and 71-14 (waste discharge requirements). The State Water Resources Control Board (State Board) in Order No. 71-26, in response to the petition for review filed by Jeffory Morshead and others, found Regional Board Order No. 71-33 to be appropriate and denied the petition. That petition involved the matter of the reasonableness of the above three limitations.

Regional Board Orders Nos. 71-33 and 71-14 were then challenged by writs of mandamus and judgment was entered in favor of the Regional Board by the San Francisco County Superior Court on September 5, 1973. The Superior Court judgment was affirmed by the California Court of Appeal, First Appellate District, on January 21, 1975. (See Morshead v. California Regional Water Quality Control Board, 45 Cal.App.3d 442).

Consequently, the State Board again affirms the reasonableness of the limitations for effluent BOD, coliform and receiving water floating matter or foam.

Compliance with the effluent limitation for suspended solids and receiving water nondissociated ammonium hydroxide limitation is required in accordance with a time schedule. The District was to submit a program and time schedule for compliance by January 15, 1976. The suspended solids limitations is consistent with the BOD limitation imposed and is the parameter customarily used where less than 10:1 dilution is available and where there are shellfish beds to protect, as is the case in Richardson Bay. The nondissociated ammonium hydroxide limitation is identical to the nonionized limitation contained in the applicable water quality control plan. The record contains sufficient evidence regarding the appropriateness of these limitations, and we find that they are appropriate. Standards and limitations more stringent than secondary treatment limitations and standards are permitted under Water Code Section 13379.

3. Contention

The provisions of the order are conflicting and unenforceable as they are largely cancelled by Regional Board Order No. 71-14.

Discussion and Finding

Provision D.7 of Regional Board Order No. 74-208 provides as follows:

"The requirements prescribed by this Order amend the requirements prescribed by Order No. 71-14 and are effective on the dates of compliance prescribed in the above time schedule PROVIDED HOWEVER, that the following requirements prescribed in Order No. 71-14 shall remain in effect and be in addition to the requirements prescribed in this Order until Cease

and Desist Order No. 71-33 and its amendment, Order No. 72-56, are rescinded by this Board:

Waste Discharge Requirements - 2.a, 3.a, 3.b, 4.b, 4.c, and 6."

The waste discharge requirements specified in Provision D.7 from Regional Board Order No. 71-14 are substantially similar to the limitations contained in the NPDES permit. We see no substantial conflict or unenforceability. The record reflects that the earlier orders were retained partially in view of the Morshead litigation which was still pending at the time the permit was adopted. While it is arguable that minor inconsistencies may exist, any inconsistencies shall be resolved in favor of the NPDES permit limitations and provisions. (See Water Code Section 13372).

4. Contention

One of the provisions of Order No. 74-208 unlawfully specifies design, location, type of construction and manner of compliance.

Discussion and Findings

The provision in question, D.6, provides as follows:

"If the discharger elects to comply with the specifications of this Order listed in provision D.2.a. by construction of separate treatment plant improvements and outfall rather than by participation in the Subregional Treatment and Disposal Program, this Board will consider revision of this Order to protect shellfish beds for the harvesting of shellfish for human consumption."

Water Code Section 13360 provides that no waste discharge requirement shall specify the design, location, type of construction or manner of compliance. The hearing record shows

that the District is actively involved in the subregional study and is uncertain regarding future manner of treatment and discharge location. It further appears from the record that the Regional Board shellfish policy should be implemented in future requirements if the point of discharge is to a shellfish area. The tentative order was specifically modified to include the present language at the public hearing in an attempt to accommodate the District.

Water Code Section 13381 provides that requirements may be modified for cause. Based upon the above factors, we find that Provision D.6 is appropriate and certainly does not specify design, location, type of construction or manner of compliance.

The District's argument in its letter dated October 27, 1975, that the subsequently adopted Basin Plan prohibition of wastewater discharge to Richardson Bay further specifies manner of compliance is unfounded. This prohibition was duly adopted and approved as provided by law. (See Water Code Section 13243).

5. Contention

The above provision D.6 of Order No. 74-208 precludes the District from compliance with prohibition C.1 which prohibits discharge within 200 feet offshore.

Discussion and Findings

Prohibition C.1 provides as follows:

"Discharge within 200 feet offshore from the extreme low water line is prohibited."

A review of the record and the District's comments fails to reveal the logic of the District's contention. Provision D.6 and Prohibition C.1 are consistent. The District has been granted a period of time to choose among the available discharge alternatives and has been given some indication of applicable standards. The record does not show a lack of water quality problems, but to the contrary, indicates many problems to be resolved in the future. We find this contention to be without merit.

CONCLUSIONS

After review of the record, and consideration of all the contentions of the petitioner and for the reasons discussed in this order, the State Board concludes that the action of the Regional Board in adopting Order No. 74-208 was appropriate and proper.

NOW THEREFORE IT IS ORDERED that the petition for review of Order No. 74-208 is denied.

Dated: March 18, 1976

/s/ W. W. Adams
W. W. Adams, Chairman

/s/ W. Don Maughan
W. Don Maughan, Vice Chairman

/s/ Roy E. Dodson
Roy E. Dodson, Member

/s/ Jean Auer
Jean Auer, Member

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